



STATE OF KANSAS

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VERN MULLER
Attorney General

September 10, 1974

Opinion No. 74-314

Mr. Robert D. Loughbom
Attorney for the Board
of Healing Arts
292 New Brotherhood Building
Kansas City, Kansas 66101

Dear Mr. Loughbom:

We have reviewed the rules and regulations proposed to be filed by the State Board of Healing Arts, concerning acupuncture and registration of physicians' assistants.

Concerning the acupuncture regulations, two items should be noted. Paragraph 3 commences thus: "Practitioners must follow all F.D.A. regulations" It is necessary that this provision specify which F.D.A. regulations are to be followed, i.e. those which are in force on a fixed date. This provision should be amended to specify the regulations which are to be applicable, either by the date on which the regulations in question are in force, or by other and specific reference.

Secondly, there is no statutory authority for paragraph V, which prescribes a fee of \$15 for a temporary permit to practice acupuncture on an experimental basis. When these changes are made and the amended regulations returned to us, we will approve them forthwith.

We have also reviewed the proposed regulations concerning physicians' assistants or physicians' extenders. These regulations are promulgated under the authority of ch. 315, L. 1973, which states thus:

"The state board of healing arts shall maintain a register of physicians' assistants showing the record of training held by each registrant and his

current address. The state board of healing arts may adopt rules and regulations necessary to carry out the provisions of this act. As used in this section, the term 'physicians' assistant' shall mean a skilled person qualified by academic and practical training to provide patient services under the direction and supervision of a physician licensed to practice medicine and surgery who is responsible for the performance of that assistant."

In Opinion 73-374, we considered the proper construction of this section. It is merely a provision for registration, and does not constitute authority for licensing physicians' assistants. Registration is not necessary to enable one to hold oneself out as a physician's assistant in this state, and to engage in that occupation. Registration is merely that, and no more. We concluded that the Board could by regulation clarify the abundant ambiguities in this provision, such as the phrase "qualified by academic and practical training to provide patient services," and to clarify other portions of the section.

However, registration is not a prerequisite to engaging in the activities of a physician's assistant or physician's extender in this state. Accordingly, it is not correct to state, as does the second sentence of the regulations, that

"[a] Physician's Assistant or Extender must possess a certificate issued by the Kansas State Board of Healing Arts prior to engaging in such occupation,"

or that "[t]he Physician's Assistant must be registered and approved by the Kansas Healing Arts Board."

Similarly, the first sentence of the second paragraph of the regulations states thus:

"A Physician's Assistant or Extender must be a skilled person, qualified by academic and clinical training, to provide patient services under the supervision and responsibility of a physician."

This statement is true only if it is qualified to registered physician's assistants.

The definitions of "Assistant to the Physician," "Care Physician," "Supervision," "U.S. Armed Forces Corpsmen Training," are all adequate, but again, it must be remembered that the extent of their operation is to define those terms as they describe the qualifications of persons who are registered as physician's assistants, the patient services for which the qualifications prescribed by the board for registrants are deemed sufficient, and the nature and direction of the physician supervision to be involved.

The Board of Healing Arts is given no regulatory or supervisory power over physicians' assistants or physicians' extenders. The Board is given no power to examine applicants for registration, and registration does not signify necessarily that the registrant does in fact have the qualifications which have been prescribed by the Board, and registration is not assurance that the registration in fact has reached the level of competence which he claims in his application for registration.

The proposed regulations speak of certification of physicians' assistants and extenders. The statute authorizes only maintenance of a register. The Board may properly provide for the issuance of certificates as evidence of registration; however, such certificates are not licenses, and may not be required as a prerequisite to acting and holding oneself out as a physician's assistant in this state. One proposed sentence states that "[r]ecertification and review of the Physician's Assistant, by the employing physician and his practice shall be made prior to the renewal for the certificate." The Board may legitimately require that as a prerequisite for registration, that an applicant present evidence to the Board that he is to act under the supervision of a licensed physician and surgeon who is responsible for his actions, that being the statutory definition of a physician's assistant, in the first instance. If, however, a physician's assistant, fully qualified as such, chooses to forego registration, and to proceed to act in this state without registration, he is free to do so, and the statute involved here provides no authority for the Board to impose sanctions therefor.

Similarly, there is no authority for the Board to require any fee for registration, and no authority for the Board to administer equivalency or proficiency examinations, or to charge fees therefor.

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The paragraph dealing with "Definition of Supervision" suggests, again, a regulatory and supervisory role for the Board other than that of a registrar, and accordingly exceeds the slight authority provided by the statute in question.

Similarly, the Board has no authority to approve or disapprove schools and courses for physician's assistant training, or to administer examinations therefor. Nor does the Board have the power to monitor, supervise and prescribe standards for the conduct of students in training programs for physician's assistants.

Again, the Board may not require, as is proposed on the next to last page of the proposed regulations, that "[i]n order to use the title of Physician's Assistant the individual must be so approved and registered with the Kansas State Healing Arts Board." Similarly, just as the Board has no power to license physician's assistants, it has no power to revoke, suspend, or to place on probation any right to practice of persons registered with the Board.

The interest of the Board as reflected in these detailed and careful regulations is highly commendable. However, the extremely slender statutory authority provided by the cited enactment does not give the Board the power to exercise the regulatory authority which these regulations contemplate. Indeed, these regulations reflect a great deal of thoughtful and concerned attention to the rule of physician's assistants and extenders, and the importance of providing adequate regulation for this growing paramedical area. Unfortunately, however, the Board has devoted greater attention to the area than has the Legislature. The regulatory needs perceived by the Board, as reflected by the proposed regulations, exceeds that provided by the mere provision for registration.

For the reasons stated, we cannot approve the regulations as proposed.

Very truly yours,



VERN MILLER
Attorney General

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